



U.S. Department of Justice

*United States Attorney
Southern District of New York*

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December 20, 2021

BY ECF

The Honorable Jesse M. Furman
United States District Judge
Southern District of New York
40 Foley Square
New York, New York 10007

Re: *United States v. Michael Avenatti*, 19 Cr. 374 (JMF)

Dear Judge Furman:

The Government respectfully submits this letter in response to the defendant's letter motion dated December 17, 2021 (Dkt. No. 180) and pursuant to the Court's order of that same date (Dkt. No. 181). For the following reasons, the motion should be denied as moot.

By way of background, on September 13, 2021, the Government produced to the defendant a full copy of the contents of the defendant's iPad. In the three months that the defendant has had to review the device's contents, the defendant has not identified any data as potentially privileged. On November 30, 2021, the filter team completed its review of the device's contents and identified 46 files to the defendant as potentially privileged. The Government then provided the defendant with "reasonable notice and an opportunity to raise with the Court any objections to the filter team's privilege determinations." *United States v. Avenatti*, --- F. Supp. 3d ---, 2021 WL 4120539, at *6 (S.D.N.Y. Sept. 9, 2021). Specifically, the filter team informed the defendant that the filter team intended to release the rest of the device's contents to the prosecution team on December 10, 2021. The filter team agreed to continue to withhold the 46 files identified as potentially privileged in order to provide the defendant with ample opportunity to review those 46 files and determine whether to assert a claim of privilege as to them. Although the defendant still had not identified any data as potentially privileged, in light of the defendant's request to engage in additional discussions with the filter team before the iPad's contents were provided to the prosecution team, the filter team, as a courtesy, did not provide any data from the iPad to the prosecution team on December 10, 2021 (or at any time thereafter).

On December 15, 2021, the defendant informed the Government that he intended to assert a claim of privilege over the 46 files that had been identified as potentially privileged by the filter team and requested that the filter team further delay the production to the prosecution team of the remainder of the iPad's contents until December 27, 2021, even though the defendant still had not identified any other data as potentially privileged, after having more than three months to review the device's contents. The Government declined to agree to this further delay, in light of the fast-approaching trial date and the amount of time a responsiveness review will require in advance of


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trial, and instead informed the defendant that the filter team would provide the defendant two additional days, until December 17, 2021—a full week after the initial deadline of December 10, 2021, two and half weeks after the filter team provided its proposed designations, and some three months since the defendant was provided the material to review.

On December 17, 2021, the defendant filed a letter motion with the Court seeking a more modest delay than he had proposed to the Government, until December 23, 2021. (Dkt. No. 180.) Subsequent to the filing of the motion, the Government conferred further with the defendant. As part of an agreement to obtain a timely response—also by December 23, 2021—from the defendant regarding other materials that have been provided by the filter team to the defendant, the parties have reached an agreement that the defendant’s response as to all such materials will be provided by December 23, 2021. Accordingly, the defendant’s motion is moot and should be denied on that basis.

Respectfully submitted,

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